

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF TEXAS  
BEAUMONT DIVISION

JOSE EDWARD HERNANDEZ                    §  
VS.                                         §          CIVIL ACTION NO. 1:05cv600  
STATE OF TEXAS                             §

MEMORANDUM ORDER OVERRULING PETITIONER'S OBJECTIONS AND ADOPTING  
THE MAGISTRATE JUDGE'S REPORT AND RECOMMENDATION

Jose Edward Hernandez, an inmate incarcerated within the Texas Department of Criminal Justice, Institutional Division, proceeding *pro se*, brought this petition for writ of habeas corpus pursuant to 28 U.S.C. § 2254.

The court ordered that this matter be referred to the Honorable Keith F. Giblin, United States Magistrate Judge, at Beaumont, Texas, for consideration pursuant to applicable laws and orders of this court. The magistrate judge has submitted a Report and Recommendation of United States Magistrate Judge. The magistrate judge recommends the petition be dismissed without prejudice for failure to exhaust administrative remedies.

The court has received and considered the Report and Recommendation of United States Magistrate Judge, along with the record, pleadings and all available evidence. Petitioner filed objections to the magistrate judge's Report and Recommendation.


The court has conducted a *de novo* review of the objections in relation to the pleadings and the applicable law. See FED. R. CIV. P. 72(b). The objections demonstrate petitioner did not exhaust his administrative remedies in accordance with institutional

regulations. Moreover, his conclusory allegations are insufficient to permit the conclusion that he was prevented from properly exhausting his administrative remedies. Accordingly, the court concludes the objections are without merit.

O R D E R

Petitioner's objections are therefore **OVERRULED**. The findings of fact and conclusions of law of the magistrate judge are correct and the report of the magistrate judge is **ADOPTED**. A final judgment will be entered dismissing this petition.

**SIGNED** this the **22** day of **November, 2005**.

  
Thad Heartfield  
United States District Judge